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ELECTRONICALLY FILED

Superior Court of California,

County of Placer

11/18/2022 at 10:59:54 AM

By: Jennifer Bunday

Deputy Clerk

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF PLACER**

12 _____)
13 NICOLE PRAHM, as an aggrieved)
14 employee pursuant to the Private)
Attorneys General Act (PAGA),)

15 Plaintiff,)
16)
17)

18 vs.)
19)
20)

21 HOT TOPIC, INC.; and DOES 1 to 20,)
22 inclusive,)
23)
24)
25)
26)
27)
28)

Defendants)
_____)

Case No. S-CV-0049489

COMPLAINT FOR DAMAGES:

**1. Civil Penalties Pursuant to Private
Attorney General Act, Labor Code §
2698 et seq.**

1 Plaintiff NICOLE PRAHM (“Plaintiff”) hereby files this Complaint against Defendant
2 HOT TOPIC, INC., and DOES 1 to 20, inclusive, (hereinafter collectively referred to as
3 “Defendants”). Plaintiff alleges the following:

4 **PARTIES AND JURISDICTION**

5 1. This is an enforcement action under the Labor Code Private Attorneys General Act of
6 2004 (“PAGA”), California Labor Code section 2698, *et seq.* to recover civil penalties and any other
7 available relief on behalf of Plaintiff, the State of California, and other current and former employees
8 who worked for Defendant in California and who suffered at least one violation of the Labor Code
9 as set forth in this complaint, at any time between November 15, 2021, and judgement.

10 2. Plaintiff NICOLE PRAHM is an individual over the age of eighteen (18) and is now
11 and/or at all times mentioned in this Complaint was a resident of the State of California.

12 3. Plaintiff is a former employee of Defendant, providing services as a non-exempt
13 employee in Defendant’s retail clothing location Roseville, California.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendant HOT TOPIC, INC.
15 is a California Corporation with its principal place of business in City of Industry, California.

16 5. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
17 herein was, at all times relevant to this action, the agent, employee, or joint employer or joint
18 venturer of the remaining defendants and was acting within the course and scope of that relationship.
19 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein
20 gave consent to, ratified and authorized the acts alleged herein to each of the remaining defendants.
21 The true names and capacities of the defendants named herein Does 1 through 20, inclusive, whether
22 individual, corporate, associate, or otherwise are unknown to Plaintiff, who therefore sues such
23 defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff
24 will amend this complaint to show such true names and capacities of Does 1 through 20, inclusive,
25 when they have been determined.

26 6. The Placer County Superior Court has jurisdiction in this matter under the California
27 Constitution, Article VI, section 10. The statute under which this action is brought does not specify
28 any other basis for jurisdiction.

1 7. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
2 the wrongful acts and violations of law asserted herein occurred within Placer County.

3 8. On November 15, 2022, Plaintiff filed her Labor Code § 2699.3 Private Attorney General
4 Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”). If
5 the LWDA does not inform Plaintiff that it intends to investigate Plaintiff’s PAGA claims within the
6 statutory period, Plaintiff may proceed in this Court to collect civil penalties.

7 **FACTS COMMON TO ALL CAUSES OF ACTION**

8 9. Plaintiff and similarly situated employees worked for Defendant as non-exempt
9 employees in California. Plaintiff worked for Defendant as a full-time assistant manager from
10 October 2021 to September 2022.

11 10. During the relevant time period, Defendant failed to indemnify Plaintiff, and similarly
12 situated employees, for all necessary expenditures or losses incurred by Plaintiff in direct
13 consequence of the discharge of her duties or in direct consequence of her obedience to the
14 directions of Defendant. Defendant failed to pay a portion of their cell phone bills, or reimburse
15 them, even though they were required to use their personal communication devices for work
16 purposes. Plaintiff, and similarly situated employees, were required to respond to messages from
17 supervisors and other employees (even after hours or on days off and this time was unpaid and off
18 the clock work).

19 11. Defendant also failed to maintain a mileage expense reimbursement policy and Plaintiff,
20 and similarly situated employees, were required to occasionally run errands in personal vehicles and
21 were not reimbursed for those expenses. At times, Plaintiff was asked to run an errand for the
22 business on her way to work before her shift, which mileage was unreimbursed and which time
23 worked was unpaid.

24 12. Defendant did not allow Plaintiff and similarly situated employees to take their statutorily
25 required meal and rest periods. Defendant failed to provide Plaintiff and other similarly situated
26 employees a 30-minute, duty-free meal period before the end of the fifth hour of work as required
27 under the law. Plaintiff and similarly situated employees regularly missed their meal and rest
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1 periods and/ or they were provided late due to the fact that Defendant chronically understaffed its
2 stores. Missed and/ or noncompliant meal periods are clearly evidenced by the missed meal period
3 penalty payments Defendant made to Plaintiff and similarly situated employees.

4 13. Defendant also failed to provide rest periods to Plaintiff and similarly situated employees
5 for every 4 hours worked or major fraction thereof. Defendants' management staff were aware this
6 was occurring and did not ensure meal and/ or rest periods were provided to Plaintiff and similarly
7 situated employees in compliance with California law.

8 14. After Plaintiff's termination on or about September 9, 2022, Defendant did not pay all her
9 accrued but unused vacation wages until September 30, 2022, as reflected in Plaintiff's wage
10 records. On information and belief, Defendant has a policy and/or practice of paying terminated
11 employees their final wages late in violation of the California Labor Code.

12 15. As explained above, Plaintiff, and similarly situated employees, were required to work
13 off the clock by responding to work messages and phone calls on their personal cell phone devices.
14 Further, Defendant had a policy of requiring Plaintiff and similarly situated employees to re-lock it's
15 stores when entering the store and prior to clocking in for a shift. All of these practices resulted in
16 off-the-clock worked time, and resulted in unpaid minimum wages and unpaid overtime wages.

17 16. As a result, Defendants did not provide Plaintiff and similarly situated employees legally
18 compliant wage statements noting, among other things, total hours worked, gross wages earned, the
19 applicable hourly rates in effect during the pay period and the corresponding number of hours
20 worked at each hourly rate. The wage statements received by Plaintiff, and similarly aggrieved
21 employees, did not accurately list all regular and overtime hours worked.

22 17. The regular wage statements made it impossible for Plaintiff, and similarly aggrieved
23 employees, to determine whether they were paid correctly, or what their correct regular rate of pay
24 was. *See Magadia v. Wal-Mart Assocs., Inc.*, 319 F. Supp. 3d 1180, 1190–91 (N.D. Cal. 2018).

25 18. Defendants also did not provide Plaintiff and similarly situated aggrieved employees all
26 wages owed upon their termination or within seventy-two (72) hours of their separation from
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1 employment. After Plaintiff was terminated from her employment on September 8, 2022, Defendant
2 did not process and provide her final paycheck until September 30, 2022.

3 19. Plaintiff is informed and believes that Defendant committed numerous other violations of
4 the California Labor Code, including but not limited to those identified in this letter. Pursuant to
5 *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018), Plaintiff intends to seek civil
6 penalties for all violations of the California Labor Code, whether she experienced them personally or
7 not.

8 20. Upon information and belief, all transactions regarding hiring, terminations, promotions,
9 pay increases, etc. relating to Defendant's California employees were submitted to and processed by
10 Defendant's HR department in its corporate headquarters. Additionally, on information and belief,
11 Defendants' corporate records, in particular HR and pay records pertaining to Defendants' California
12 employees, are also maintained at Defendant's corporate headquarters.

13 21. Upon information and belief, Defendant maintains a central Payroll department at its
14 corporate headquarters, which processes payroll for all Defendant's employees, including Plaintiff
15 and similarly situated, aggrieved employees.

16 22. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or should
17 have known that Plaintiff and other similarly situated aggrieved employees were entitled to receive
18 paid sick leave at the regular rate of pay, compliant wage statements, and timely payment of all
19 wages earned upon termination of employment. In violation of the California Labor Code, Plaintiff
20 and other similarly situated, aggrieved employees, did not receive these payments.

21 23. At all times herein set forth, PAGA provides that any provision of law under the Labor
22 Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected
23 by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as
24 an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
25 themselves and other current or former employees pursuant to procedures outlined in California
26 Labor Code section 2699.3.
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1 24. PAGA defines an aggrieved employee in Labor Code section 2699(c) as “any person who
2 was employed by the alleged violator and against whom one or more of the alleged violation was
3 committed.”

4 25. Plaintiff and other current and former employees of Defendant are aggrieved employees
5 as defined by the Labor Code in that they are all Defendant’s current or former employees and one
6 or more of the alleged violations was committed against them.

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8 **FIRST CAUSE OF ACTION**
9 **CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.**
10 **(As to All Defendants)**

11 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
12 set forth herein.

13 27. Plaintiff brings this cause of action as a proxy for the State of California and in this
14 capacity, seeks penalties on behalf of all Aggrieved Employees for Defendant’s violations of the
15 California Labor Code, including but not necessarily limited to, those Labor Code and Wage Order
16 violations identified above.

17 28. On or about November 15, 2022, Plaintiff, through counsel, sent written notice to the
18 LWDA regarding Defendant’s violations of the California Labor Code, pursuant to Labor Code
19 section 2698, *et seq.*, PAGA. If the LWDA does not inform Plaintiff that it intends to investigate
20 Plaintiff’s PAGA claims within the statutory period, Plaintiff may proceed in this Court to collect
21 civil penalties.

22 29. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and
23 all aggrieved employees for all violations of the Labor Code from November 15, 2021, through trial
24 on this matter.

25 30. Defendant’s conduct, as alleged herein, violated various sections of the California labor
26 Code, including but not limited to, the following:

27 31. Labor Code section 1174(d) requires employers to keep “payroll records showing the
28 hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in

1 accordance with rules established for this purpose by the commission, but in any case shall be kept
2 on file for not less than three years.” Defendant did not keep accurate information regarding all
3 hours worked by Plaintiff and similarly situated employees, largely by failing to accurately record all
4 hours worked. This was in violation of the Labor Code.

5 32. Labor Code section 226 requires employers to furnish to employees with “an accurate
6 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
7 employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the
8 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
9 written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6)
10 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
11 only the last four digits of his or her social security number or an employee identification number
12 other than a social security number, (8) the name and address of the legal entity that is the employer .
13 . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number
14 of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendants
15 failed to comply with these requirements with respect to Plaintiff and similarly situated employees in
16 violation of the Labor Code.

17 33. Labor Code sections 201–203 require that all wages be paid to employees upon
18 separation and/or termination of employment. Here, for the reasons stated above, Defendant’s
19 employees did not receive all final wages due and owing to them at the time of termination or
20 seventy-two (72) hours thereafter as required by Labor Code sections 201–203. This is in violation
21 of the Labor Code.

22 34. Labor Code sections 510 and 1194 require employers to pay employees overtime for any
23 work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any
24 one workweek. Employers must also pay overtime for the first eight (8) hours worked on the
25 seventh day of work in any one workweek. Finally, employers must pay double time for all hours
26 worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8)
27 hours on the seventh day of work in any one workweek. As stated above, Plaintiff and similarly
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1 situated employees worked over eight (8) hours per day and forty (40) hours per week and were not
2 paid overtime wages in violation of the Labor Code.

3 35. During the period Plaintiff and similarly situated employees were employed by
4 Defendant they were entitled to be paid at least the State's minimum wage rate for each hour that
5 they worked. See, e.g., IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 5-2001,
6 section (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendant did not pay
7 Plaintiff and similarly situated employees at least minimum wage for all hours worked. Thus,
8 Plaintiff and similarly situated employees were not paid at least the applicable state minimum wage
9 for all hours worked in violation of the Labor Code.

10 36. Labor Code section 226.7 and IWC Wage Order No. 4-2001, section 11(A) require
11 employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked. For
12 the reasons stated above, Plaintiff and similarly situated employees were not authorized and
13 permitted to take legally compliant meal periods pursuant to California law. Defendant also failed to
14 pay all meal period premiums for its failure to provide meal periods.

15 37. Labor Code section 226.7 and IWC Wage Order No. 5-2001, section 12(A) require
16 employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or
17 major fraction thereof worked. For the reasons stated above, Plaintiff and similarly situated
18 employees were not authorized and permitted to take legally compliant rest periods pursuant to
19 California law in violation of the Labor Code. Defendant also failed to pay any rest period
20 premiums for their failure to provide rest periods.

21 38. Labor Code section 2802(a) states that "An employer shall indemnify his or her
22 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
23 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
24 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
25 unlawful." For the reasons stated above, Defendant failed to pay required reimbursements to
26 Plaintiff and similarly situated employees for required business expenses in violation of the Labor
27 Code.
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1 39. Labor Code section 210 require that all wages, including overtime, minimum wages and
2 meal and rest period premiums, be paid to employees at regular specified intervals. Here, for the
3 reasons stated above, aggrieved employees did not receive all regular wages due and owing to them
4 at the times required by Labor Code section 210.

5 40. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal.
6 Rptr. 3d 502, 513 (2018), Plaintiff seeks civil penalties on behalf of the State of California and all
7 aggrieved employees for all violations of the California Labor Code, whether she experienced them
8 personally or not.

9 **DAMAGES**

10 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 11 1. A jury trial;
12 2. For civil and statutory penalties and liquidated damages under the California Labor
13 Code according to proof allowed by law;
14 3. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
15 fees;
16 4. For injunctive relief;
17 5. For an award of prejudgment and post-judgment interest; and
18 6. For an award to Plaintiff of such other and further relief as the Court deems just and
19 proper.
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21 Dated: November 17, 2022

Castle Law: California Employment Counsel

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23 By: 
24 Timothy B. Del Castillo
25 Kent L. Bradbury
26 Attorneys for Plaintiff NICOLE PRAHM
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